Summary Assessment of Public Comments Received from January 27 to April 5, 2021 on the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S Proposed 6 NYCRR PART 326.2(c)(17) Regulation June 30, 2021

In January 2021, the New York State Department of Environmental Conservation (Department) proposed regulations to prohibit all sale, distribution, possession, or use of pesticides with the active ingredient chlorpyrifos. Notice of the proposed rulemaking appeared in the January 27, 2021 State Register as well as in the DEC's Environmental Notice Bulletin. Public comments were received from January 27, 2021 through April 5, 2021. A virtual public hearing was held on March 30, 2021.

The majority of commentors supported this proposed regulation to protect public health, particularly farmworkers, farm families, children, and others living near agricultural areas. Several commentors referred to various studies suggesting that chlorpyrifos exposure may be linked to cancer, Parkinson's disease, reduced IQ, memory loss, attention deficit disorder, developmental delays, other neurological health effects, and low birth rates.

Other commentors supported this proposed regulation to protect mammals, fish, amphibians, aquatic and terrestrial invertebrates, reptiles, birds, pollinators, and plants.

Several people commented that the Department should delay the effective date of the chlorpyrifos product registration cancellations. In addition, they requested that the Department use the authority provided in Environmental Conservation Law Section 33-0715 to appoint an Advisory Committee consisting of representatives from the health, science, and agriculture disciplines. Based upon the committee's recommendations, the Department should revise the final regulation and the registration cancellations.

The chlorpyrifos product registration cancellations are separate actions and are not considered part of this rulemaking and the provisions of Environmental Conservation Law Section 33-0715 relate to pesticide product registration matters, including the suspension and cancellation of pesticide product registrations. The proposed rulemaking is not an action associated with a pesticide registration, cancellation, or suspension of a specific pesticide product; it is a prohibition of an active ingredient. Therefore, these requests are not applicable to this rulemaking.

Several commentors objected to the chlorpyrifos pesticide product registration cancellations and the proposed rulemaking based upon the need for chlorpyrifos to be used as a means of pest resistance management associated with an Integrated Pest Management (IPM) program.

Although the chlorpyrifos pesticide product registration cancellation process is beyond the scope of this proposed rulemaking, the Department did identify concerns about pest resistance and IPM that are addressed in the response to comments. The Department considered IPM and resistance management during the development of this proposed rulemaking and recognized that efforts are needed, and some are already underway, to develop alternatives and IPM techniques to address the loss of chlorpyrifos. The Department also consulted with Cornell University College of Agriculture and Life Sciences to discuss potential pest resistance and IPM impacts to agriculture and industry. Although there are significant pests that chlorpyrifos products are used to control in certain crops, and there are some short-term impacts to growers, there are some effective, albeit more costly,

alternatives that can help to mitigate development of significant pest resistance. It was determined that research and development of alternative products and practices should reduce long-term agricultural impacts associated with pest resistance and IPM.

Several commentors were concerned about the disposal or use of existing stocks and inventory of chlorpyrifos pesticide products to ensure that they can comply with the proposed regulation.

Following the effective date of the proposed regulation, the application of chlorpyrifos pesticide products will not be permitted. However, the May 3, 2021 enforcement discretion will allow the possession, transport, storage, or handling of open or closed containers of chlorpyrifos pesticide products that were already in the possession of distributors and users prior to the effective date of their registration cancellation. This discretion only allows this use for the purposes of shipment out of state or for proper disposal until February 1, 2022. In addition, as resources allow and based upon demand, the Department will plan CleanSweepNY events to accommodate the disposal needs for chlorpyrifos pesticide products.

Several comments were made that the proposed rulemaking will create a direct economic hardship for agricultural producers and turf managers since many alternative products are more expensive and require multiple applications. The expense and the need to conduct multiple applications makes these alternative products less desirable options to control pests on certain fruit and vegetable crops and turf.

The Department recognized that there could be potential economic impacts to agricultural producers associated with this regulation as described in the Regulatory Impact Statement. This regulation was developed to protect environmental resources and people. Various factors were weighed during this decision-making process including the need for the continued use of this pesticide, the Environmental Protection Agency (EPA) draft risk assessments, and other information. The information reviewed indicates that there are risks to pollinators and other environmental resources, that occupational handler risks are still a concern, and that the neurodevelopmental effects from chlorpyrifos remain uncertain. The Department also reviewed the pesticide annual reports for the sales and use of chlorpyrifos in New York since 2013. This evaluation of the sale and use reports indicates that there is relatively little use of this pesticide in the state. Based upon the information reviewed and the uncertainties associated with many aspects of chlorpyrifos use, the Department concluded that the prohibition of chlorpyrifos will help protect workers, environmental resources, pollinators, and children even though it may have economic impacts on agricultural producers. The Department believes that economic impacts should be limited.

Several commentors indicated that the alternatives to chlorpyrifos may also pose health and ecological impacts associated with their use.

There are several pesticides that potentially can be used as alternatives to chlorpyrifos. These alternative active ingredients should be used and evaluated on a case by case basis and the least toxic material should be chosen by the user when needed. All pesticides have precautions associated with their use, which may be identified during the Department's registration process. However, the use of chlorpyrifos has been brought under additional scrutiny by the Department due to the risk, exposure, other information reviewed, the Governor's directive, and the Legislature's intent to prohibit its use and eliminate potential exposure to the public and environmental resources.

Several commentors remarked that political processes, including Governor Cuomo's veto and directive associated with the chlorpyrifos bill, passed by both houses of the legislature, circumvented the Department's science-based pesticide registration process.

In response to the Governor's directive, the Department reviewed the most recent available data from EPA, including EPA's September 15, 2020 draft ecological risk assessment for registration review of chlorpyrifos and the September 21, 2020 draft human health risk assessment for registration review of chlorpyrifos. Independent of the Governor's directive the Department's proposed rulemaking was supported by the information reviewed and the uncertainties about chlorpyrifos use specified in these documents; consequently, the Department initiated the rulemaking process to prohibit the use of chlorpyrifos.

Several commentors expressed concerns that there are not suitable alternatives to replace chlorpyrifos pesticide products for pests including the cabbage maggot, onion maggot, and bluegrass weevil. Some of these commentors have requested that either existing stocks of these materials be permitted until a viable alternative is found or limited use of this material be permitted for the control of certain pests.

The Department has determined that the need to protect workers, environmental resources, pollinators, and children is essential and a complete prohibition of the use of chlorpyrifos products will help accomplish this protection The variables associated with pest control and the methods available to register and regulate pesticides make it difficult to limit pesticides to certain uses; therefore, a complete prohibition is the only viable mechanism to achieve the Department's and Governor's goal of protection of public health and the environment from chlorpyrifos. Research into alternative products will need to continue with New York State research and academic institutions and others to find solutions to control these pests.